

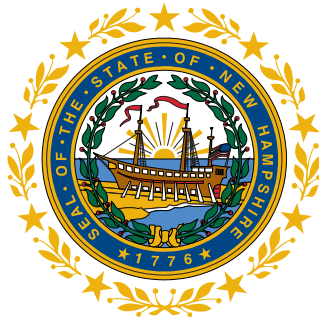
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The

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FROM THE COMMISSIONER'S DESK

It is hard to believe that this newsletter is already in its 4th year! We have received a lot of positive comments from you. Many of you have said you appreciate the information about the office in general, as well as information specifically tailored to your particular business. Some, however, have called us with problems when they try to comply with requirements geared towards other regulated entities.

As you know, the New Hampshire Banking Department regulates two separate types of entities. On the Banking Division "side", we oversee state chartered banks, credit unions and non-depository trust companies. In the Consumer Credit Division, the department regulates a variety of entities including first mortgage brokers, first mortgage bankers, second mortgage home loan lenders, small loan lenders (including payday and title loan lenders), retail sellers of automobiles and other similar entities.

In this newsletter, you should pay particular attention to the notes from the Division that regulates your activities. This is important because different laws apply to banks as opposed to a mortgage company. Banks are examined for safety and soundness while consumer credit entities are examined for compliance with state and federal laws. So, while it may interest you to read "how the other half lives", it is confusing if you try to apply the other Division's requirements to your operation.

As always, if you have any questions about the information in the newsletter or any other matter, feel free to give us a call.

New Personnel in the Banking Department

The department added two new staff members. Dawn Allen joined the department as the Director of Operations and Margaret Tetu joined the Banking Division as a Bank Examiner.

BANKING DIVISION

Interpretive Letter on Sharing the Report of Examination with Internal/External Auditors

On June 22, 2005, the Commissioner signed an interpretive letter that addresses the sharing of the Report of Examination for Banks, Credit Unions, and Non-Depository Trust Companies with their internal/external auditors.

The term "sharing" is strictly limited to viewing the report of examination. Whenever the Report of Examination is disclosed pursuant to this letter, the information remains the property of the Department and the recipients of the Report of Examination may not disclose or make public the Report of Examination, except as expressly authorized by the Commissioner. Under no circumstances shall copies of the Report of Examination be retained by any party or person other than the institution.

In order for an institution to share the Report of Examination the confidential treatment of the Report of Examination must be clearly stated in the agreement between the internal/external auditors and the institution. The contract and the practice will be reviewed as a part of the examination process. The department will not support the sharing of the Report of Examination if the language on the confidential treatment of the report is not clearly stated in the agreement.

It is the Department's position that the confidential nature of the relationship between the institutions and

its auditors allows the banks to share the Report of Examination while maintaining the required confidentiality of the reports.

If you have any questions please contact Chief Bank Examiner Chuck M. O'Connor at our office.

Audit Reports

In accordance with NH RSA 384:43, financial institutions, with the exception of credit unions, are required to direct their auditors to provide the department with copies of the audit reports within 60 days after they are made available to the financial institution. Copies of engagement letters should also be forwarded to the department when made available. This statute also applies to non-depository trust companies. Audit reports and engagement letters are incorporated into the quarterly offsite review process conducted by the department.

Director and Officer Resources

The following web-sites are valuable sources for directors and others within the institution:

<http://www.fdic.gov/regulations/resources/directorscorner/index.html>

The FDIC Director's Corner offers guidance for insured institutions and their officers and directors to use to fulfill their responsibilities.

<http://www.fdic.gov/bank/analytical/stateprofile/index.html>

Banking and economic conditions described for each state, listed by FDIC region.

<http://www2.fdic.gov/sdi/index.asp>

Statistical information is available through this website.

CONSUMER CREDIT DIVISION

Direct Marketing and RSA 384:67

By Andrea J. Boudreau Shaw, Esq.

The department recognizes the need to find new and creative ways to advertise. We would remind licensees of their obligation to ensure that all advertising complies with both state and federal advertising laws.

Direct mail marketing appears to be on the rise in New Hampshire. While direct marketing is not new, we are seeing an increasing amount of borderline statements within these ads.

The ads in question are mailed under the auspices of a consumer's current mortgage holder. The solicitation often states the current mortgage holder's name or a variation of it. The consumer is lead to believe that their current lender is sending the solicitation. In reality, it is an offer from a competitor to refinance the consumer and the company making the solicitation is simply using the current mortgage holder's name (or variation) in the ad.

In all instances brought to the department's attention, the original mortgage holder's name or trademark is being used without authorization. The fine print on the marketing piece often discloses the true identity of the company making the solicitation, this may not be sufficient to clearly identify who is making the offer to consumers.

RSA 384:67 prohibits any individual or business entity from using a trade name or trademark of any bank, credit union, or mortgage company in an unauthorized and deceptive manner. RSA 384:68 further authorizes the Bank Commissioner to issue Cease and Desist Orders against any company violating RSA 384:67.

When these types of ad are brought to the department's attention, a Cease and Desist Order is sent under RSA 384:67. In addition, if the offending company is a licensee, the activity is reviewed at the next scheduled examination to ensure compliance.

While the direct mail marketing is not prohibited, please ensure that any advertisements or direct mail pieces clearly identify the company making the solicitation and who the consumer is dealing with.

Question of the Quarter:

Who is required to provide the Truth-in-Lending disclosure?

Answer:

12 CFR 226.17 addresses who is required to provide the truth in lending disclosure (herein after "TIL"). It states that the "creditor" is required to provide the TIL. Creditor is a term of art and is defined in the definition section of 12 CFR 226.

12 CFR 226.2 (17) Creditor means: (i) A person

(A) who regularly extends consumer credit \3\ that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a down payment), and

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- (B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

Therefore the creditor is the one making the credit decision and to whom the obligation is payable (which means the lender not the broker). During an NHBD examination, the examiner will look for a copy of the initial and final TIL to be maintained in the file regardless of your role in the mortgage process (lender or broker). NHBD doesn't require the broker to provide the TIL, but we require the broker to obtain a copy of the TIL to maintain in the loan file.

NOTE: "creditor" is a two part definition – you must meet both part A **AND** part B. Arguably a mortgage broker may meet part A of the definition, but a broker does not meet part B, thus the broker is not required under the Truth in Lending regulations to provide the TIL disclosures.

How should the TIL disclosure be provided?

Sec. 226.17 General disclosure requirements.

(a) Form of disclosures.

- (1) **The creditor shall make the disclosures required by this subpart (emphasis added)** clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under Sec. 226.18. The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

For a complete copy of the Truth in Lending Regulation go to: http://www.access.gpo.gov/nara/cfr/waisidx_05/12cfr226_05.html